

EX-AIDE CHALLENGES C.I.A.'S SECRECY SUIT

Author of Vietnam Book Says Bid
to Bar His Speaking About Agency
Violates First Amendment

By DEIRDRE CARMODY

Frank Snepp, the former Central Intelligence Agency employee who wrote a book criticizing the agency's activity in the Vietnam War, filed court papers yesterday contending that the suit brought against him by the Department of Justice violated the First Amendment guarantee of freedom of speech.

Last month the Government filed a civil complaint against Mr. Snepp for breaking his secrecy agreement, a mandatory agreement signed by C.I.A. employees when they join the agency in it, the employees state that they will not publish any material relating to the agency without its approval.

The Government is seeking to restrain Mr. Snepp from speaking publicly about the C.I.A. for the rest of his life. It is also seeking damages that would include any profits from the book, "Decent Interval," and additional damages for his allegedly undermining trust and confidence in the agency.

The Snepp case is considered of great importance by civil libertarians because it marks the first time that the Government has attempted to restrain an individual's speech or publication of material when national security or the use of classified information was not at issue.

'Key Issue' Defined

"This is a test case designed to test a contract dealing with nonsecret material," said Alan Dershowitz, professor of law at Harvard University, who is representing Mr. Snepp jointly with the American Civil Liberties Union. He added:

"The key issue is whether an agency of the Government can require all of its employees to sign a contract forbidding them from writing or speaking about nonclassified material which is critical of the Government. What this contract really says is that nobody can write anything unfavorable about the Government."

It is the first time that the Justice Department has invited a full legal test of the contract. Attorney General Griffin B. Bell announced last month that the Department of Justice was filing the complaint against Mr. Snepp to find out if the secrecy agreement was valid. The department filed a civil complaint because Mr. Snepp is not being charged with breaking any law.

"What we are doing is zeroing in on the secrecy agreement that Snepp signed; we are testing the oath," said John Kussen, an assistant director of public information in the Justice Department. "If we thought he had done something in violation of the criminal statute, we would have gone after him for a criminal action."

Jury Trial Sought

The papers filed in the Federal District Court in the Eastern District of Virginia yesterday were Mr. Snepp's answer to the Justice Department's complaint. The Civil Liberties Union will move later to dismiss the case, according to Mark Lynch, the A.C.L.U. lawyer who is representing Mr. Snepp.

Mr. Snepp is asking for a jury trial. He is also contending that the secrecy agreement is unconstitutional because it violates the First Amendment by imposing a prior restraint on Mr. Snepp's speech and on publication of material that is not related to national security.

Mr. Snepp also contends in the court papers that the agency has waived the provisions of the agreement because it had a long-standing policy of encouraging its employees to make unauthorized disclosures concerning the agency when it is in the agency's interest to do so. The papers state that these disclosures have included classified information about intelligence sources and agency methods.

Mr. Snepp, who was the C.I.A.'s principal analyst of North Vietnamese political affairs and prepared the agency's intelligence estimates in the last years of the war, said that one reason that he had broken his agreement and published the book was that the agency had refused to let him do an "after-action" report.

He had asked the C.I.A.'s Inspector General for permission to analyze the agency's possible mistakes and to try to answer "the agonizing question" of why so many Vietnamese who had been working for the C.I.A. were left behind when the Americans departed just before the fall of Saigon.

Department Has No Comment

Mr. Russell said that the Justice Department had no comment on Mr. Snepp's charges.

Mr. Snepp's book, which was recently published with great secrecy by Random House, attributes incompetence and deception to United States officials but does not disclose the names of agents or other classified information.

One of the worst defeats for the First Amendment in recent years in the eyes of civil libertarians, was the injunction obtained by the Justice Department in the Nixon years that forbade Victor Marchetti, another former C.I.A. employee, to publish a book about the agency. The book involved classified material. Mr. Marchetti was ordered to clear with the agency before ever again writing about its classified activities.

The Supreme Court twice refused to review the case.

Observers of the Snepp case see irony in President Carter's recent announcement that he will support a law protecting "whistle-blowing" in Government because the Justice Department is proceeding with its action against Mr. Snepp.

The Government has not brought any charges against Random House for publishing the book. Robert L. Bernstein, chairman of the publishing house, issued a statement this week saying that the Justice Department's suit was "abhorrent and contrary to the American democratic system."

"It is essential to the health of the American democracy that the people know what has happened," he said. "And this is what Frank Snepp made possible when he told the story of the American debacle during the last days of Vietnam."

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